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1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE DISTRICT OF NEVADA

3 In re:

4 INFINITY CAPITAL MANAGEMENT, INC.

5 Debtor.

6 HASELECT-MEDICAL RECEIVABLES
7 LITIGATION FINANCE FUND
8 INTERNATIONAL SP,

9 Plaintiff,

10 v.

11 TECUMSEH-INFINITY MEDICAL
12 RECEIVABLES FUND, LP,

13 Defendant/Counterclaim
14 Plaintiff,

15 v.

16 HASELECT-MEDICAL RECEIVABLES
17 LITIGATION FINANCE FUND
18 INTERNATIONAL SP, and ROBERT E.
19 ATKINSON, CHAPTER 7 TRUSTEE,

20 Counterclaim Defendants.

21 Case No. 21-14486-abl

22 Chapter 7

23 Adversary Case No. 21-01167-abl

24 **TECUMSEH-INFINITY MEDICAL
25 RECEIVABLES FUND, LP'S ANSWER
26 AND AFFIRMATIVE DEFENSES TO
27 TRUSTEE'S COUNTERCLAIM**

ROBERT E ATKINSON, CHAPTER 7 TRUSTEE,

Counter Plaintiff,

V.

**TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,**

Counter Defendant.

Defendant Tecumseh–Infinity Medical Receivables Fund LP (“Tecumseh” or “Counter Defendant”) submits its Answer and Affirmative Defenses to Counterclaim Plaintiff Robert E. Atkinson, Chapter 7 Trustee’s (“Trustee” or “Counter Plaintiff”) *Counterclaim against Tecumseh–Infinity Medical Receivables Fund, LP* (the “Counterclaim”) (ECF No. 32).

ANSWER

1. Paragraph 1 of the Counterclaim is a legal conclusion that does not require a response. To the extent a response is required, the allegations in paragraph 1 of the Counterclaim are denied.

2. Paragraph 2 of the Counterclaim is a legal conclusion that does not require a response. To the extent a response is required, the allegations in paragraph 2 of the Counterclaim are denied.

3. Paragraph 3 of the Counterclaim is a legal conclusion that does not require a response. To the extent a response is required, the allegations in paragraph 3 of the Counterclaim are denied.

4. Paragraph 4 of the Counterclaim is a legal conclusion that does not require a response. To the extent a response is required, the allegations in paragraph 4 of the Counterclaim are denied.

5. Tecumseh admits the allegations contained in paragraph 5 of the Counterclaim.

6. Tecumseh admits the allegations contained in paragraph 6 of the Counterclaim.

7. Tecumseh admits the allegations contained in paragraph 7 of the Counterclaim.

8. Tecumseh admits the allegations contained in paragraph 8 of the Counterclaim.

1 9. Tecumseh denies the allegations contained in paragraph 9 of the Counterclaim.

2 10. Tecumseh denies the allegations contained in paragraph 10 of the Counterclaim.

3 11. Paragraph 11 of the Counterclaim is a legal conclusion that does not require a
4 response. To the extent a response is required, the allegations in paragraph 11 of the Counterclaim
5 are denied.

6 12. The documents are not attached to the Counterclaim and otherwise speak for
7 themselves. Tecumseh denies any remaining allegations set forth in paragraph 12 of the
8 Counterclaim.

9 13. The documents are not attached to the Counterclaim and otherwise speak for
10 themselves. Tecumseh denies any remaining allegations set forth in paragraph 13 of the
11 Counterclaim.

12 14. The documents are not attached to the Counterclaim and otherwise speak for
13 themselves. Tecumseh denies any remaining allegations set forth in paragraph 14 of the
14 Counterclaim.

15 15. The Sub-Advisory Agreement speaks for itself. Tecumseh denies any remaining
16 allegations set forth in paragraph 14 of the Counterclaim.

17 16. The documents are not attached to the Counterclaim and otherwise speak for
18 themselves. Tecumseh denies any remaining allegations set forth in paragraph 16 of the
19 Counterclaim.

20 17. The documents are not attached to the Counterclaim and otherwise speak for
21 themselves. Tecumseh denies any remaining allegations set forth in paragraph 17 of the
22 Counterclaim.

23 18. Tecumseh denies that the Debtor has the right to receive payment on any of the
24 Tecumseh Receivables.¹ Tecumseh denies all remaining allegations set forth in paragraph 18 of
25 the Counterclaim.

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27 ¹ Capitalized terms not otherwise defined herein will take on the meaning ascribed to them in
28 Tecumseh's Counterclaim (ECF No. 26).

FIRST CAUSE OF ACTION

19. The responses set forth above are realleged and reaverred as if fully set forth herein.
20. Paragraph 20 of the Counterclaim is a legal conclusion that does not require a response. To the extent a response is required, the allegations in paragraph 20 of the Counterclaim are denied.
21. Paragraph 21 of the Counterclaim is a legal conclusion that does not require a response. To the extent a response is required, the allegations in paragraph 21 of the Counterclaim are denied.
22. Paragraph 22 of the Counterclaim is a legal conclusion that does not require a response. To the extent a response is required, the allegations in paragraph 22 of the Counterclaim are denied.
23. Paragraph 23 of the Counterclaim is a legal conclusion that does not require a response. To the extent a response is required, the allegations in paragraph 23 of the Counterclaim are denied.
24. Paragraph 24 of the Counterclaim is a legal conclusion that does not require a response. To the extent a response is required, the allegations in paragraph 24 of the Counterclaim are denied.
25. Paragraph 4 of the Counterclaim is a legal conclusion that does not require a response. To the extent a response is required, the allegations in paragraph 4 of the Counterclaim are denied.
26. Tecumseh denies the allegations contained in paragraph 26 of the Counterclaim.
27. Paragraph 27 of the Counterclaim is a legal conclusion that does not require a response. To the extent a response is required, the allegations in paragraph 27 of the Counterclaim are denied.
28. Paragraph 28 of the Counterclaim is a legal conclusion that does not require a response. To the extent a response is required, the allegations in paragraph 28 of the Counterclaim are denied.
29. Paragraph 29 of the Counterclaim is a legal conclusion that does not require a

1 response. To the extent a response is required, the allegations in paragraph 29 of the Counterclaim
 2 are denied.

3 30. Paragraph 30 of the Counterclaim is a legal conclusion that does not require a
 4 response. To the extent a response is required, the allegations in paragraph 30 of the Counterclaim
 5 are denied.

6 31. Paragraph 31 of the Counterclaim is a legal conclusion that does not require a
 7 response. To the extent a response is required, the allegations in paragraph 31 of the Counterclaim
 8 are denied.

9 32. Tecumseh denies that Trustee is entitled to any relief relating to the disputed
 10 receivables at issue, and expressly denies each and every assertion in the ‘wherefore’ clause found
 11 below Paragraph 32 of the Trustee’s Counterclaim.

12 33. Each and every allegation not specifically admitted herein is hereby denied.

13 **AFFIRMATIVE DEFENSES**

14 **FIRST AFFIRMATIVE DEFENSE**

15 The Court lacks subject matter jurisdiction over Tecumseh Receivables which are not
 16 property of the chapter 7 bankruptcy estate.

17 **SECOND AFFIRMATIVE DEFENSE**

18 The Tecumseh Receivables are not property of the Debtor’s estate and therefore are not
 19 subject to the Trustee’s strong-arm powers under 11 U.S.C. § 544(a).

20 **THIRD AFFIRMATIVE DEFENSE**

21 The Debtor possesses nothing more than bare legal title of Tecumseh Receivables as a
 22 purchase money resulting trust existed by operation of law pre-petition under South Carolina, by
 23 which Tecumseh Receivables were held in trust by Debtor for the benefit of Tecumseh, as provider
 24 of the purchase monies. The strong arm power of 11 U.S.C. § 544 “could not make the corpus of
 25 a valid resulting trust property of the bankruptcy debtor.” *In re Torrez*, 63 B.R. 751, 755 (B.A.P.
 26 9th Cir. 1986), *aff’d*, 827 F.2d 1299 (9th Cir. 1987) (“[u]nder California law a resulting trust is
 27 implied by operation of law whenever a party pays the purchase price for a parcel of land and
 28 places the title to that land in the name of another”); *see also Cage v. Kang (In re Kang)*, 2013

1 Bankr. LEXIS 844 (Bankr. S.D. Tex. Mar. 7, 2013) (resulting trust under Texas law prevails over
2 section 544(a)(3)).

3 **FOURTH AFFIRMATIVE DEFENSE**

4 Tecumseh was properly perfected prior to the Debtor's bankruptcy, and as such its interest
5 in the Tecumseh Receivables may not be attacked under § 544(a).

6 Dated: January 28, 2022

Respectfully submitted,

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